

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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| Illinois Commerce Commission | : | |
| On Its Own Motion | : | |
| | : | |
| Investigation of Applicability of Sections | : | 13-0506 |
| 16-122 and 16-108.6 of the Public Utilities | : | |
| Act. | : | |

PROPOSED ORDER ON REHEARING

By the Commission:

I. PROCEDURAL HISTORY

On September 4, 2013, the Illinois Commerce Commission (“Commission” or “ICC”) entered an order initiating (“Initiating Order”) a docket to investigate the applicability of Sections 16-122 and 16-108.6 of the Public Utilities Act (“PUA” or “Act”). The Initiating Order identified a list of issues to be considered in this investigation. The Initiating Order directs the parties in this proceeding to explore these issues in order to appropriately interpret the PUA as it relates to the dissemination of customer specific information.

Because of the wide-ranging implications of these issues, the Commission named Commonwealth Edison Company (“ComEd”) and Ameren Illinois Company (“Ameren”) as parties to this investigation. Aside from Commission Staff (“Staff”), ComEd and Ameren, the following parties intervened: City of Chicago (“City”), Citizens Utility Board (“CUB”), Retail Energy Supply Association (“RESA”), Elevate Energy (formerly known as CNT Energy, (“Elevate”)), Illinois Competitive Energy Association (“ICEA”), the Illinois Attorney General (“AG”), and Environmental Law & Policy Center (“ELPC”).

On January 28, 2014, the Commission entered an Order (“Final Order”) in this proceeding. On February 18, 2014, CUB filed a Motion for Clarification. The Commission granted CUB’s Motion for Clarification in part and issued an Amendatory Order reflecting the clarification on March 19, 2014.

On February 28, 2014, ComEd timely filed an Application for Rehearing. On March 19, 2014, the Commission granted ComEd’s Application for Rehearing in part on the sole issue of whether Sections 16-122 and 16-108.6 of the PUA allow a utility to release anonymous customer usage data to third parties that are not enumerated in

Section 16-122 (such as researchers, energy efficiency program providers, and others that are not Retail Electric Suppliers (“RES”) or municipalities).

At a status hearing convened on April 8, 2014, the Administrative Law Judge (“ALJ”) set a schedule for the filing of Verified Initial Comments on Rehearing and Reply Comments on Rehearing. Verified Initial Comments on Rehearing were filed by Elevate, Staff, ComEd, CUB, and the AG on April 22, 2014. Reply Comments on Rehearing were filed by Elevate, ComEd, CUB, and the AG on May 6, 2014.

At a subsequent status hearing convened on May 12, 2014, the parties informed the ALJ that no additional comments were needed and the parties waived their rights to an evidentiary hearing. All of the comments filed in this proceeding were admitted into the record during the hearing. The record was marked “Heard and Taken” on June 10, 2014.

II. APPLICABLE LAW

Section 16-122 states:

- (a) Upon the request of a retail customer, or a person who presents verifiable authorization and is acting as the customer's agent, and payment of a reasonable fee, electric utilities shall provide to the customer or its authorized agent the customer's billing and usage data.
- (b) Upon request from any alternative retail electric supplier and payment of a reasonable fee, an electric utility serving retail customers in its service area shall make available generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification. Provided however, no customer specific billing, usage or load shape data shall be provided under this subsection unless authorization to provide such information is provided by the customer pursuant to subsection (a) of this Section.
- (c) Upon request from a unit of local government and payment of a reasonable fee, an electric utility shall make available information concerning the usage, load shape curves, and other characteristics of customers by customer classification and location within the boundaries of the unit of local government, however, no customer specific billing, usage, or load shape data shall be provided under this subsection unless authorization to provide that information is provided by the customer.
- (d) All such customer information shall be made available in a timely fashion in an electronic format, if available.

(220 ILCS 5/16-122).

Section 16-108.6(d) provides in part that a participating utility's Smart Grid Advanced Metering Infrastructure Deployment Plan ("AMI Plan") is to secure the privacy of customer's personal information. Section 16-108.6(d) describes "personal information" as "the customer's name, address, telephone number, and other personally identifying information, as well as information about the customer's electric usage" and requires electric utilities to secure the privacy of "personal information" as part of their AMI Plan. (220 ILCS 5/16-108.6(d)). Section 16-108.6(d) prohibits the disclosure of such information by utilities for commercial purposes, except where authorized.

III. RELEASE OF ANONYMOUS DATA TO THIRD PARTIES NOT NAMED IN SECTION 16-122

A. ComEd's Position

It is ComEd's position that a reading of both the plain language and the contextual meaning of the PUA demonstrates that the release of anonymous customer usage information (both aggregated data and data at the individual customer level) to parties not listed in Section 16-122 is permissive. It notes that Section 16-122 lists those situations where utilities "shall," i.e., are required, to provide certain types of customer data, both generic and specific, and prohibits the disclosure of customer specific data without authorization. (ComEd Initial Comments at 3)¹. Because anonymous data is not customer specific information, Section 16-122 neither requires nor prohibits a utility from providing anonymous customer usage information. ComEd maintains that if the anonymous customer data cannot be linked to a specific customer, then the "privacy" of the customer – "the state or condition of being free from being observed or disturbed by other people" – is protected. (*Id.* at 4).

ComEd asserts that there is no language in Section 16-122 or Section 16-108.6 which would prohibit a utility from voluntarily providing generic or anonymous customer data to any party, nor language prohibiting the Commission from authorizing a utility to do so. (*Id.* at 3). ComEd contends that there is no rule of construction that allows a court or agency to declare that the General Assembly did not intend the plain meaning of the words it used. Moreover, ComEd maintains a court or agency can only look beyond the language where that language is ambiguous which is not the case in this proceeding.

ComEd argues that the Commission has broadly interpreted Section 16-122 on other occasions. For example, the Commission has approved ComEd's Energy Usage Data System ("EUDS") program on two separate occasions as part of ComEd's 3-year energy efficiency plans. (*Id.* at 4). ComEd explains that under its EUDS program, it makes generic tenant usage information available to building owners and managers, neither of whom are specifically listed in Section 16-122. Similarly, ComEd notes that in the Commission's Order entered in Docket No. 12-0298 approving ComEd's AMI Plan, the Commission directed ComEd to track numerous metrics which required ComEd to gather a wide range of customer data and report such information in its public report,

¹ All references to comments refer to the comments on rehearing.

making the information available to many parties who are neither RESs nor municipalities. ComEd also notes that in its recent rate design investigation in Docket No. 13-0387, the ALJ in that proceeding compelled ComEd to produce anonymous customer information to the AG, CUB, and others pursuant to a data request. This ruling was issued despite an objection that the request should be denied because Section 16-122 provided an exclusive listing of when a utility could provide customer information. (*Id.*).

ComEd contends that its interpretation of Section 16-122 strikes the appropriate balance of allowing third parties to receive the information needed to spur innovation within the marketplace and best take advantage of the benefits that AMI and the smart grid have to offer, while also protecting the privacy of its customers. (*Id.* at 5). ComEd maintains that if the interpretation of Section 16-122 contained in the Final Order is allowed to stand, it could have wide-ranging, deleterious impacts on the sharing of customer information as it has been practiced in Illinois and in Commission proceedings since the beginning of open access.

Finally, ComEd states that it agrees with all of the changes to the Final Order proposed by Staff, with one exception. ComEd believes Staff's proposed amendment concerning the issue of a fee is outside the scope of the rehearing and waived because it is untimely. (ComEd Reply Comments at 2). On the underlying issue, ComEd's position is that it is not prohibited from requiring any party requesting anonymous data to pay a reasonable fee. ComEd asserts that if the Commission determines that clarification is appropriate, it proposes the following modification to the sixth sentence in the sixth paragraph in Section III.A.11 of the Final Order, which it believes is consistent with Staff's position: "Further, any party requesting aggregated, anonymous data may be is required to pay a reasonable fee, which would surely defray any additional cost." (*Id.*). ComEd maintains this clarification is also consistent with ComEd's past practice, and how the requirement for charging a fee under Section 16-122 has been interpreted and applied in the past.

B. Staff's Position

Staff asserts that it agrees with ComEd's position that Sections 16-122 and 16-108.6 do not prohibit the discretionary release of aggregated, anonymous customer usage information to third parties not listed in those sections. (Staff Initial Comments at 5). Staff observes that the purpose of establishing the Anonymous Data Protocol in this proceeding was to ensure that no customer specific information is released by the utilities without customer authorization. Staff contends that since no customer specific billing, usage, load shape data will be released under the data protocol adopted by the Commission, any party is eligible to receive the data since the data will be anonymous and therefore non-customer specific. Accordingly, Staff recommends that the Commission clarify that any party is able to request data pursuant to the Anonymous Data Protocol that the Commission adopted in this docket. (*Id.*). Staff also recommends that the Commission strike the language in the Commission Analysis and Conclusion in Section III.A.11 of the Final Order regarding payment of a fee by requesting parties for this type of data. Staff argues that as stated above, the data provided pursuant to the Anonymous Data Protocol is not customer specific billing, usage or load shape data and

therefore a fee is not required pursuant to Section 16-122. It is Staff's position that Section 16-122 does not *prohibit* the utilities from charging a fee for providing anonymous data. However, Section 16-122 does not *require* such a fee. (*Id.* at 6.)

Additionally, Staff notes that the first issue discussed in the Final Order in Section III.A does not concern the issue of what type of customer authorization is needed for the release of customer specific information. Instead, the third issue discussed in the Final Order in Section III.C addressed the release of customer specific information and only as it related to the release of such information to RESs. (Staff Initial Comments at 5). Staff further notes that the Commission declined to broaden the third issue and clarified its position in its Amendatory Order. Thus, Staff argues this issue only addresses the release of customer specific information to RESs. It does not address access to customer specific information to parties other than RESs. However, Staff maintains it is not clear that the Commission needs to address such issues at this time since it appears that parties other than the ones enumerated in Section 16-122 are mainly interested in anonymous customer information. In other words, they are interested in data that is not customer specific and therefore no customer authorization is needed before it can be released by an electric utility. (Staff Initial Comments at 6.)

As a result, Staff recommends that the Commission modify the last two paragraphs in Section III.A.11 of the Final Order as follows:

The Commission concurs with the parties' agreed definition of "customer specific information" and their position on the release of "aggregated," anonymous usage information, and finds that electric utilities are not prohibited from making such information available to third parties ~~enumerated in Section 16-122 without customer authorization~~. The Commission agrees that in order to protect personal and customer specific information from unauthorized disclosure, a Standard Protocol should be established and followed by the electric utilities when receiving requests for data concerning the use of electric utilities service at the individual customer level. The Commission finds that Staff's proposed Data Protocol should be adopted with one exception: the "15/15 Rule" as recommended by CUB, and applied in other jurisdictions, should be used to release information about customers within one customer class. As the AG noted, no statistical analysis was provided demonstrating that groupings of 15 are any less protective of customer privacy than 30. The Commission is not persuaded by ComEd's argument that this method is "resourcefully burdensome," as they do not describe with specificity what that burden would be other than to say it may result in greater costs. ~~Further, any party requesting aggregated, anonymous data is required to pay a reasonable fee, which would surely defray any additional cost.~~ The Commission believes this methodology is a reasonable compromise of all of the parties' positions and will best achieve the goal of making granular data available to authorized third parties such as RESs while also protecting personal and customer specific information from unauthorized disclosure pursuant to the PUA. Further, it also ensures that the

utilities and RESs are compliant with Section 16-122 since no customer specific information will be divulged.

Like Staff, the Commission is sympathetic to CNT's concerns regarding the interpretation of Section 16-122, however, the Commission agrees with Staff and the AG that Section 16-122 does not allow the utility to release customer specific usage data unless it is provided anonymously ~~to a service provider, in this case an ARES or municipality aggregating its residents' electric service,~~ or the customer has provided consent. Section 16-122(a) as well as subsections (b) and (c) are clear that customer specific billing, usage, or load shape data cannot be provided unless a customer provides authorization. The Commission is of the opinion that Section 16-122 and Section 108.6(d) ~~are an exclusive list and to interpret the statute otherwise ignores the plain language of Section 16-122(a) which provides that customer specific information (customer's billing and usage data) can only be released to a customer or a customer's agent who presents verifiable authorization. (220 ILCS 5/16-122(a)).~~ The Commission sees the importance of striking a careful balance between protecting a customer's privacy while unlocking the full benefits of the smart meter infrastructure. Research institutions and program administrators, such as CNT, are an important part of maximizing the benefit of technology implemented as a result of EIMA. However, the Commission believes that the measures in this Order protect a customer's privacy and are consistent with the statutes in place at this time. CNT is certainly not prohibited from receiving anonymous, aggregated data ~~or customer specific information subject to the findings in this Order and as a program administrator should make direct contact with its program participants to request this information. Just as other parties are obligated to do, CNT should obtain customer authorization for access to this information.~~

(Final Order at 16-18; Staff Initial Comments at 6-7).

C. CUB's Position

CUB urges the Commission to allow the release of anonymous customer usage information to third parties not listed in Sections 16-122 and 16-108.6 of the PUA. CUB asserts that Section 16-122 does not place any limitations on the rights of any third parties to access anonymous customer usage data. According to CUB, the only limitation set forth by the plain language of the statute is a prohibition against sharing customer specific billing, usage or load shape data without customer authorization. (CUB Initial Comments at 5). CUB notes that by definition, data which is anonymous is not customer specific, therefore the language in Section 16-122 does not bar the Commission from authorizing the release of information provided pursuant to the Anonymous Data Protocol to any third party. CUB notes that the protocol protects customer privacy since the information cannot be linked to an individual customer.

CUB also argues that when interpreting a statute, the primary function of the court is to ascertain and give effect to the intent of the legislature. CUB believes the

General Assembly made it clear when it enacted the Energy Infrastructure Modernization Act (“EIMA”) – including Section 16-108.6 – that it was the “policy of this State that significant investments must be made in the State’s electric grid over the next decade to modernize and upgrade transmission and distribution facilities in the State.” (*Id.* at 6, *quoting* Public Act 97-616, as modified by Public Act 97-646). CUB maintains that by encouraging these investments, the General Assembly hoped to ensure the State’s electric utility infrastructure will promote future economic development in the State and that the State’s electric utilities will be able to continue to provide quality electric service to their customers, including innovative technological offerings that will enhance customer experience and choice. It is CUB’s view that the record clearly demonstrates that the only way to ensure customers receive the maximum benefits of the EIMA investments is to ensure that third parties have access to customer usage data. (*Id.* at 9). Accordingly, CUB argues that interpreting Section 16-122 as an exclusive list of situations in which data can be provided would unintentionally hinder many of the potential benefits created by the EIMA and its mandatory investments, AMI meters and smart grid technologies. (*Id.* at 10). CUB also points out that if Section 16-122 is interpreted as an exclusive list, then it must also apply to data created by the smart grid through the AMI Plan, which would in turn render Section 16-108.6(d)’s admonition to “secure the privacy of the customer’s personal information” duplicative of Section 16-122. For these reasons, CUB argues interpreting Section 16-122 as an exclusive list would be contrary to the objectives of the General Assembly and Illinois rules of statutory interpretation.

D. Elevate’s Position

Elevate argues that Section 16-122 does not prohibit the release of anonymous customer usage information to parties that are not RESs or municipalities and notes that the parties seem to have reached consensus on this issue. Elevate states that Section 16-122 merely creates a list of situations in which electric utilities “shall” provide certain data to certain parties. (Elevate Initial Comments at 2). Elevate contends that the plain language of this section indicates that it was created to ensure that information is provided in particular, well-defined instances and does not address anonymous customer usage information at all. According to Elevate, interpreting Section 16-122 as an exhaustive list of situations in which data can be provided renders Section 16-108.6(d)’s admonition to “secure the privacy of the customer’s personal information” duplicative, violating general rules of statutory interpretation.

Elevate also argues that limiting the release of anonymous customer information to RESs and municipalities would reduce potential customer benefits created by research and improved energy efficiency programs without increasing customers’ privacy, since the data is already anonymous, making it impossible to match it with a particular customer. Finally, Elevate states that it agrees with ComEd’s argument that upholding the Final Order’s interpretation of Section 16-122 would inhibit the fact-finding process in Commission proceedings. (Elevate Reply Comments at 2).

E. AG's Position

The AG takes issue with ComEd's interpretation of Section 16-122 and the examples cited by ComEd. The AG asserts that ComEd's interpretation of Section 16-122 relies upon the fact that the Commission has sanctioned the collection and even the public release of anonymized customer usage data in certain circumstances to challenge the view that the legislature has limited distribution of such information to an "exclusive list" of data recipients. (AG Initial Comments at 3). However, the AG argues the examples cited by ComEd are not governed by Section 16-122. The AG opines that the Commission-authorized public release of customer usage information to third parties does not by definition expand the General Assembly's limitation on the circumstances under which a utility can disseminate customer specific usage information to select service providers.

The AG contends those factors do not appear to be at issue in this proceeding. The AG argues the data protocol adopted by the Commission in the Final Order removes the issue of "customer-specificity" from consideration. Data that is anonymized and aggregated does not pose a risk to the customer privacy concerns that are the subject of Section 16-122. It is the AG's view that Illinois law is silent on the topic of whether parties other than service providers are entitled to obtain customer usage information, in whatever form. The AG notes that Section 16-122 was enacted long before the implementation of smart grid technologies by Illinois utilities. (*Id.*). Moreover, as CUB has pointed out, neither Section 16-122 nor Section 16-108.6 of the Act addresses how to handle the large amounts of usage information which may be generated by AMI.

The AG believes that by limiting the release of usage information to a format that cuts the link between specific customers and their usage data, the Commission has fashioned a solution to reflect policy considerations that have arisen subsequent to the General Assembly's implicit restriction of other uses of such information, while still respecting the concerns that the General Assembly reflected in its passage of Section 16-122. (*Id.*). The AG contends that the examples cited by ComEd to justify a broader reading of Section 16-122 may not be used to re-interpret that provision, but are in effect inapposite to the issue at hand. In the instances described by ComEd, it is collecting and reporting on consumption factors or supplying information in a regulated proceeding under Commission oversight in order to fulfill specific requirements it must meet to provide service in compliance with the Act. The AG maintains that the data protocol adopted in the Final Order addresses the issue of third party access or commercialization of customer usage information by parties not subject to the Commission's jurisdiction or not otherwise designated by the General Assembly as an appropriate recipient of such information in a manner consistent with the legislature's intention to protect customer privacy under Section 16-122.

The AG asserts that, like the other parties that have filed comments, it believes there is nothing in the Act that precludes the dissemination of customer usage data, provided that the format of the data is designed to protect customer privacy in order to comport with the intent of Sections 16-122 and 16-108.6 of the Act. (AG Reply

Comments at 1). It is the AG's position that the data protocol adopted by the Commission avoids the problem that the statute was designed to address by removing any customer-specificity from the data in the first place. (*Id.* at 4). Accordingly, the AG believes the data protocol adopted by the Commission in its Final Order could enable the dissemination of customer usage information while at the same time advancing the public's interest in protecting consumer privacy. The AG believes this action on the Commission's part is an important and constructive step toward making whatever legislative action may be required to achieve a variety of public policy goals, including those associated with recent energy efficiency mandates in Illinois law as well as the implementation of the EIMA a reality.

The AG further states that it understands Staff's position to be that anonymous data is available to any party, whether or not specifically mentioned in Section 16-122 because the Anonymous Data Protocol has stripped the data of its customer-specific nature, thereby removing it from the purview of Section 16-122. (*Id.* at 2). The AG asserts that it does not disagree with this interpretation but it takes issue with Staff's proposal that this type of information should be provided to third parties free-of-charge. As third parties seek this data, utilities may incur costs to compile requested information in accordance with the Commission-approved data protocol. (*Id.*). The AG argues that while the payment of a reasonable fee to obtain the type of information described in Section 16-122 is undoubtedly an integral part of the statute, it does not necessarily follow that there will be no costs associated with usage data compilation and distribution under conditions other than those mentioned in the statute. The AG avers that in the event the utility incurs such costs, they will likely be included in the utilities' general operating expenses, presumably to be paid for by each utility's ratepayers. The AG maintains that given that data compiled by utilities and distributed pursuant to the Anonymous Data Protocol may be used in a variety of contexts by third parties, including for commercial purposes unrelated to the provision of basic utility service, it would hardly be fair to ask ratepayers to absorb these costs. (*Id.*).

Additionally, the AG contends that it is evident from the language in the Act itself that the General Assembly anticipated the payment of a fee to obtain customer usage information relevant to smart grid development. The AG points out that Section 16-108.6(d) states:

In the event a participating utility receives revenues from the sale of information obtained through Smart Grid technology that is not personal information, the participating utility shall use such revenues to offset the revenue requirement.

220 ILCS 5/16-108(d).

It is the AG's view that the Act provides that a utility's sale of information obtained through advanced technology, even information that is "not personal information," should not be exploited for commercial purposes to the detriment of ratepayers. It follows that the imposition of a reasonable fee on those seeking the authorized dissemination of such information is consistent with the principle that ratepayers must

not be compelled to subsidize third parties' acquisition of any usage data. The AG asserts that indeed, the utilities themselves, in all likelihood, will not be willing to absorb these costs, nor should they be expected to do so. Only by imposing a reasonable fee to cover any costs of compilation and dissemination will third parties' costs of doing business be properly borne by the third parties themselves.

Accordingly, the AG proposes that the following language, which Staff recommended be eliminated from the sixth paragraph in Section III.A.11 of the Final Order, instead be retained and slightly modified as follows:

Further, any party requesting aggregated, anonymous data is required to pay a reasonable fee, ~~which would surely~~ to defray any additional costs incurred to compile and distribute the data in accordance with the provisions of this Order, and in a manner consistent with the protection of consumer privacy interests as set forth in the Public Utilities Act and other relevant Illinois law.

IV. COMMISSION ANALYSIS AND CONCLUSION

The Commission understands that the sharing of aggregated, anonymous customer usage data can have significant benefits to third parties that are not enumerated in Section 16-122 such as researchers, energy efficiency program providers, and others that are not RESs or municipalities. However, the issue of customer privacy is very important to the Commission. Accordingly, it is imperative that the Commission strike the right balance between protecting customers' privacy and unlocking the full benefits of the smart meter infrastructure.

The parties agree that Section 16-122 and Section 16-108.6 of the PUA do not prohibit the release of anonymous customer usage information to third parties that are not enumerated in these sections, provided the information is presented in a way that precludes someone from determining the usage characteristics or other personally identifying data of identifiable end users. The Commission concurs with the parties' position. The Commission believes Section 16-122 does not address the release of anonymous customer usage information and that the only limitation set forth by the plain language of Section 16-122 and Section 16-108.6 is the release of customer specific information. As noted in the Final Order, anonymous information is not customer specific information. Further, anonymous information will only be released by the utility pursuant to the data protocol adopted in the Final Order. This data protocol strips data of customer specific information and therefore ensures only non-customer specific information will be released. Therefore, the release of such information to third parties, including parties that are not listed in Section 16-122, without customer authorization is not prohibited by Section 16-122 or Section 16-108.6 of the PUA. The Commission also believes the release of anonymous customer usage information to any party pursuant to the data protocol adopted in the Final Order is consistent with the legislature's intention to protect customer privacy since the information will be released in a manner that prevents it from being reasonably linked back to an identifiable customer. Additionally,

the Commission concurs with the parties that making this information available is in the public interest and consistent with the goals and objectives of the PUA.

With respect to the issue raised by Staff regarding the payment of fees, the Commission concurs with Staff's position that information provided pursuant to the data protocol adopted in the Final Order is not customer specific information, therefore a fee is not required pursuant to Section 16-122. However, as noted by Staff and ComEd, Section 16-122 does not prohibit the utilities from charging a fee for providing this information. Therefore, the Commission finds that the utilities may require that any party requesting anonymous data pay a reasonable fee for such data.

The Commission also finds that Staff's recommended modifications to the last sentence in the last paragraph in Section III.A.11 of the Final Order are reasonable. These modifications clarify that this docket does not address the release of customer specific information other than to RESs which is addressed in Section III.C of the Final Order.

Finally, the Commission finds that the last two paragraphs in Section III.A.11 of the Final Order are modified as follows to reflect the conclusions reached above:

The Commission concurs with the parties' agreed definition of "customer specific information" and their position on the release of "aggregated," anonymous usage information, and finds that electric utilities are not prohibited from making such information available to third parties ~~enumerated in Section 16-122 without customer authorization~~. The Commission agrees that in order to protect personal and customer specific information from unauthorized disclosure, a Standard Protocol should be established and followed by the electric utilities when receiving requests for data concerning the use of electric utilities service at the individual customer level. The Commission finds that Staff's proposed Data Protocol should be adopted with one exception: the "15/15 Rule" as recommended by CUB, and applied in other jurisdictions, should be used to release information about customers within one customer class. As the AG noted, no statistical analysis was provided demonstrating that groupings of 15 are any less protective of customer privacy than 30. The Commission is not persuaded by ComEd's argument that this method is "resourcefully burdensome," as they do not describe with specificity what that burden would be other than to say it may result in greater costs. Further, any party requesting aggregated, anonymous data may be is required to pay a reasonable fee, which would surely defray any additional cost. The Commission believes this methodology is a reasonable compromise of all of the parties' positions and will best achieve the goal of making granular data available to authorized third parties such as RESs while also protecting personal and customer specific information from unauthorized disclosure pursuant to the PUA. Further, it also ensures that the utilities and RESs are compliant with Section 16-122 since no customer specific information will be divulged.

Like Staff, the Commission is sympathetic to CNT's concerns regarding the interpretation of Section 16-122, however, the Commission agrees with Staff and the AG that Section 16-122 does not allow the utility to release customer specific usage data unless it is provided anonymously to a service provider, in this case an ARES or municipality aggregating its residents' electric service, or the customer has provided consent. Section 16-122(a) as well as subsections (b) and (c) are clear that customer specific billing, usage, or load shape data cannot be provided unless a customer provides authorization. The Commission is of the opinion that Section 16-122 and Section 16-108.6(d) are an exclusive list and to interpret the statute otherwise ignores the plain language of Section 16-122(a) which provides that customer specific information (customer's billing and usage data) can only be released to a customer or a customer's agent who presents verifiable authorization. (220 ILCS 5/16-122(a)). The Commission sees the importance of striking a careful balance between protecting a customer's privacy while unlocking the full benefits of the smart meter infrastructure. Research institutions and program administrators, such as CNT, are an important part of maximizing the benefit of technology implemented as a result of EIMA. However, the Commission believes that the measures in this Order protect a customer's privacy and are consistent with the statutes in place at this time. CNT is certainly not prohibited from receiving anonymous, aggregated data or customer specific information subject to the findings in this Order and as a program administrator should make direct contact with its program participants to request this information. Just as other parties are obligated to do, CNT should obtain customer authorization for access to this information.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties and the subject matter herein;
- (2) Section 16-122 and Section 16-108.6 of the PUA allow a utility to release anonymous customer usage data pursuant to the Anonymous Data Protocol adopted in the Final Order to any third party, not only to a service provider such as a RES or municipality aggregating its residents' electric service;
- (3) Section 16-122 permits a utility to charge a party requesting anonymous data a reasonable fee; and
- (4) the Final Order in this docket is amended to incorporate the modifications set forth in Section IV herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Order entered on January 28, 2014, as amended by the Amendatory Order entered on March 19, 2014, is amended as noted herein. In all other respects, the Order, as amended, remains the same and in full force and effect.

IT IS FURTHER ORDERED that the investigation on the applicability of Sections 16-122 and 16-108.6 of the Public Utilities Act pertaining to the release of customer specific information by electric utilities is concluded.

IT IS FURTHER ORDERED that all motions, petitions, objections and other matters in this proceeding that remain unresolved are hereby disposed of in a manner consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:
BRIEFS ON EXCEPTIONS DUE:
REPLY BRIEFS ON EXCEPTIONS DUE:

June 11, 2014
June 25, 2014
July 2, 2014

Sonya Teague Kingsley
Administrative Law Judge